

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

17 Cr. 350 (S.D.N.Y.) (KBF)

- v. -

RAZH DEN SHULAYA and  
AVTANDIL KHURTSIDZE

Defendants.

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**DEFENDANTS’ MOTION *IN LIMINE* TO  
EXCLUDE TESTIMONY OF JOHN PENZA  
(Motion *in Limine* No. 1)**

Pursuant to the Federal Rules of Criminal Procedure, and based on the accompanying memorandum of law, the defendants Razhden Shulaya and Avtandil Khurtsidze jointly move this Honorable Court to exclude the testimony of the government’s purported organized crime “expert,” government agent John Penza because (1) his proposed testimony necessarily relies on out of court statements of non-testifying declarants, thus violating the defendants’ rights under the Sixth Amendment of the United States Constitution; (2) his proposed testimony does not satisfy the requirements of Federal Rule of Evidence 702 and 703; and (3) the proposed testimony is more prejudicial than probative and thus inadmissible under Federal Rule of Evidence 403.

Dated: New York, New York  
April 23, 2018

Respectfully submitted,

/s/ Megan Wolfe Benett

Megan Wolfe Benett, Esq.  
750 Third Avenue, 32<sup>nd</sup> Floor  
New York, NY 10017  
(212) 973-3406  
(212) 972-9432 (fax)  
mbenett@kreindler.com  
*Attorney for Defendant Avtandil Khurtsidze*

/s/ Arthur Ken Womble

Ken Womble, Esq.  
Zeman & Womble, LLP  
66 Willoughby Street  
Brooklyn, NY 10013  
(718) 514-9100  
(917) 210-3700 (fax)  
womble@zemanwomblelaw.com  
*Attorney for Defendant Avtandil Khurtsidze*

/s/ Anthony Cecutti

Anthony Cecutti, Esq.  
The Astor Building  
217 Broadway, Suite 707  
New York, New York 10007  
Ph: (212) 619-3730  
Cell: (917) 741-1837  
Fax: (212) 962-5037  
anthonycecutti@gmail.com  
*Attorney for Defendant Razhden Shulaya*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of DEFENDANTS' MOTION IN LIMINE TO EXCLUDE TESTIMONY OF JOHN PENZA (Motion in Limine No. 1) and supporting documents and exhibits were filed electronically this 23<sup>rd</sup> day of April 2018. Notice of this filing will be served upon all parties in 17 Cr. 350 (S.D.N.Y.) (KBF) by operation of the Southern District of New York's Electronic Case Filing ("ECF") system, which all parties may access.

/s/ Megan W. Bennett